Supreme Court, U.S.
FILED

02 769 JUN 24 2002

OFFICE OF THE CLERK

No. _____

IN THE

Supreme Court of the United States

GEORGE B. BOWLER,

Petitioner,

VS.

JOHN E. POTTER

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Eighth Circuit

PETITION FOR WRIT OF CERTIORARI

GEORGE B. BOWLER
4041 GRAND AVENUE SOUTH
MINNEAPOLIS, MINNESOTA 55409
(612) 823-9189

16 pp

QUESTION PRESENTED FOR REVIEW

AT THE EEOC HEARING I COULD ONLY HAVE ONLY TWO PEOPLE TESTIFY. AT THE HEARING ONE WAS JAMES ALLEN, UNION MAN, AND RON PROTOSTELIC. SUPERVISOR, THERE WERE MANY QUESTIONS I COULD NOT ASK FROM SOME PEOPLE. ERICA BRIX, SUPERVISOR WHY DID YOU TRY TO KEEP ME FROM LEARNING DIFFERENT THINGS, CHEAT ME OUT OF SOME OF MY BREAK TIME, KEEP ME FROM WORKING THE SAME AMOUNT OF HOURS AS THE OTHER TE'S?. WHY DID YOU SEND A LETTER TO THE POST OFFICE PERSONNEL ABOUT REHIRING THAT WAS A YEAR LATE?

MARY SMITH WHY DID YOU ACCUSE ME OF CHEATING THE POST OFFICE OUT OF A HALF HOURS PAY, WHEN INSTEAD YOU CHEATED ME OUT OF A HALF HOURS PAY?, WHY DID YOU CLAIM YOU GAVE ME A EVALUATION OF MY WORK WHEN YOU DID NOT. YOU WROTE A LETTER TO THE POST OFFICE PERSONNEL CLAIMING THAT I COULD NOT DO THE WORK. WHY?, WHY DID YOU GIVE THE OTHER TE'S A CHANCE TO LEARN 895 SORT PLAN AND NOT ME?

DICK BUTTENHOFF WHY DID YOU SAY I WAS SLOW IN NINE DIGIT BREAK UP WHEN THERE WAS NO QUOTA IN NINE DIGIT BREAK UP. I SELDOM WORKED IN NINE DIGIT, ALMOST ALL THE TIME I WORKED UNDER YOU, ON A BCS MACHINE WHY DID YOU NOT WRITE ABOUT THAT?

PAUL STANGL, YOU TALK ABOUT ME NOT DOING GOOD ON A DBCS. I WAS SELDOM ON A DBCS, GOT NO TRAINING ON A DBCS, MOST OF THE TIME I WORKED UNDER YOU, WAS ON A BCS. WHY WAS NOTHING BROUGHT UP ABOUT THAT?

PAUL GROSSEN ABOVE THE SUPERVISOR'S IN RANK, ON 3-8-1996 YOU ACCUSED ME OF BRINGING A GUN TO WORK THE NEXT DAY. I LOST TWO DAYS OF WORK BECAUSE OF YOU, I WAS LEAVING 3-10-1996. I WANT THE NAME OF THAT PERSON WHO CAME TO YOU AND SAID I WAS BRINING A GUN TO WORK THE NEXT DAY?

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BRIEF

Those are the people who are involved in my case.

Paul Crossen, Mike Klien and John Fritz. About me bringing a gun to work the next day.

Those supervisors I worked under, Erica Brix, Mary Smith, Paul Stengl, Dick Buttenhoff and Ron Protostelic otherwise known as Ron P.

Hostile Linda Shareman, and Bednar. And non hostile workers James Allen, Ron Nash, Marty Hatten and Dwight Newport.

In 1996 at the main post office, in Minneapolis, Ron P. Sat at a table with me and gave me a evaluation of my work. He said that there was nothing wrong with my work and that I would be there for another year. I signed my name on the evaluation paper, and was given a copy of the evaluation paper. I had worked under Ron P. For over a year. He was happy with my work, he did not have to ask the other supervisors if I could do the work or not. He knew what I could do. Soon after, Paul Crossen sent Ron P. to the third shift, and gave the job of giving evaluations to Mary Smith. Smith had it in for me because I wanted to get on a DBCS and learn sort plan 895. She wrote a letter to the Post Office personnel, she told them that I could not do the work, she said that she had given me an evaluation. I had not worked under Supervisor Smith for well over a year. So how would she show what kind of work I did? She never gave me an evaluation, I never signed an evaluation paper. Smith said that she asked other supervisors about my work. She never asked Ron P. The other supervisors never talked about the work that I always did. Only about the work I seldom did. That was Supervisor Stangl and Buttenhoff. Ron P. was sent on the third shift to get him out of the way. Supervisor Brix claims that I got more training than the other workers. That is not true. The clock rings would show that I got no training for DBCS or sort plan 895. That is on record.
Brix claims that I had a bad attitude. That is not true. She tried to provoke me in many ways. She kept me from having a 15 minute break, then said to me "we had our joke for today." Another time she said to me "you're screwed." When Brix would tell me what OCR to run, what time to be on it and who to take over from. I would write it in a notebook. That way if I ever forgot what Brix said, I could look it up in the notebook. It only took me a few seconds to write it down. One day Supervisor Brix fired a TE when I showed up for work she threatened

to fire me. I went to the EEO and told them about Supervisor Brix. The EEO had a talk with Brix. She wrote a letter praising me for using my notebook—some time after Brix told the EEOC that I took too much time when I wrote in my notebook, that I was holding everything up that was another reason why I should not be working there. Brix claimed that I got more training than the other works. That is not true. There is a room at the post office where they keep track of who got the training and who did not. They would prove Brix wrong.

When the DBCS's first came into the main post office I wanted to run one just the same as the other workers. They got their chance, I did not. They worked on a DBCS five days a week. I went to the EEO. After that I worked on a DBCS one day a week. Many times I did not get one day a week. I learned to program the computer on the DBCS on my half hour breaks. The others learned on company time. When Supervisor Smith saw I could do the work, she let me work on the DBCS sort plan 894 for five days a week that was in 1994, I worked on the DBCS for at least six months, when some new workers were going to get on a DBCS. They were going to learn sort plan. The people I worked with were going to learn sort plan 895. Supervisor Smith did not want me to learn 895 sort plan on the DBCS. Instead, she wanted me to take rubber bands off the envelopes.

I talked to James Allen union man, about Supervisor Smith. He talked to Supervisor Smith. She said that I could not learn the Hold Outs, for 895 sort plan. I was never given a chance, but the other workers were given a chance. I feel now that she looked up my medical records. The post office doctor said that my speech was slow, so she felt that I was mentally disabled. I now feel that Supervisor Brix and Smith looked up my medical records and knew about what the doctor had written about me. They not only felt that I was too old to do the work, but that I was also mentally disabled. I now feel that is why I was never given a chance to learn while the other workers were given a chance to learn. At the EEOC hearing I did not know what the doctor had said about me until Kathy Forbs, who wrote an appeal to the EEOC, told me. Supervisor Smith accused me of punching in sooner on half hour breaks so that I would accumulate more work time. Smith accused me of cheating the post office out of one half hour of pay, she wanted me to punch out a half hour sooner that I night. I did punch out at 11:30 instead of 12:00. When I got my check the next week it was a half hour short. I showed my check to Supervisor Smith. She said that she did not like

my attitude. After that, she was accusing me of being late after my breaks—also a TE only gets one evaluation a year from a supervisor. I got one from Ron P. that one is the only one that would count. Supervisor Smith never game me an evaluation. She should never have wrote that letter to the post office personnel about me telling them not to hire me. Smith did not like it that I was trying to get on a DBCS sort plan 895. That is why she got rid of me. That is retaliation.

On 3-8-1996, I was told to go into Paul Crossen's office. He said that I was going to bring a gun to work the next day and kill everyone at the post office. I was very upset when I heard that. Without thinking I said there are two supervisors here that need killing. But I am not going to do it. I am not going to bring a gun to work tomorrow and I am not going to kill anybody. I like most of the workers here. Crossen was not interested in finding out the truth. All he wanted to do was to get rid of me so I would be removed from the protected class in age discrimination.

When I had a lawyer, the lawyer asked the people who Crossen claimed were witnesses about me, none of them said anything bad about me. The lawyer asked Crossen who said I was bringing a gun to work the next day? Crossen could not remember, he could not remember anything. I should never have been in that office. If I had never been in there I would never had said what I did about the two supervisors.

Patricia R. Congemi, lawyer for the post office, claimed that a settlement had been reached between me and the post office and that I got the training on the DBCS sort plan 895. That is not true. The EEO put my complaint in a desk drawer and forgot about it. The post office never made an offer to me. There was no settlement. The post office wanted me to work on a DBCS when some would take a half hour break or when someone would be gone for a whole day. When I did go on a DBCS the other person always wanted to take mail from the stackers. Supervisor Smith told them to do it. It can be proven in court that I got no training on the DBCS. Congeni got my case thrown out of court by saying that only the TE's worked on certain machines and not the full time workers did not. And that when the post office got rid of the machines, the TE's would also go. That is not true. The machines are still there and the full time workers are working them. Many TE's have become full time workers.

When Mr. Connor was my lawyer, he asked lawyer Cangemi for a list of all the TE's who became full time workers. He waited and

waited but he never got the list from Congemi. Comgemi was very quick to tell the eighth circuit court of appeals that I did not get my appeal in on time. I am very sorry about that. I was very depressed when I read about my case being thrown out of court. I put the paper down. I asked Layer Connor if I could appeal. He said yes you have ninety days. When I went to the court house. I was told that I was late. They said I had sixty days not ninety days. They said I could ask for more time, which I did. The court said I could go on.

I would like to see my case back in court. I would like to see the truth come out. I would like to get my back pay back, from 3-9-1996 to when my case settled by the court. Also, I would like to work at the post office as a full time employee, but not under the supervisors who had it in for me.

I did suffer emotionally when I worked under those supervisors and being accused of bringing a gun to work. I am not sure what to ask for.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

George B. Bowler
6-23-2002

REASONS FOR GRANTING THE PETITION

I would like to see my case back in court. I would like to see the truth come out. I would like to get my back-pay back, from March 9, 1996 to when my case was settled by the court. Also, I would like to work at the Post Office, as a full-time employee, but not under those supervisors who had it in for me.

I did suffer emotionally, when I worked under those supervisors and was being accused of, bringing a gun to work. I am not sure what to ask for.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

George B. Bowler
June 23, 2002

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

GEORGE E. BOWLER, Civil No. 98-1577 (JRT/FLN)

Plaintiff,

v. **ORDER**

WILLIAM J. HENDERSON
Postmaster General,

Defendant

George E. Bowler, 4041 Grand Avenue South, Minneapolis, MN 55409, *pro se* plaintiff.

Patricia R. Cangemi, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, 300 South Fourth Street, Ste. 600, Minneapolis, MN 55415, for defendant.

This matter is before the Court on *pro se* plaintiff's letter request for an extension of time to file an appeal of the judgement. On December 6, 2000, Plaintiff filed a motion for an extension of time to file this notice of appeal. The Court granted plaintiff's motion on March 14, 2001, ordering that plaintiff's notice of appeal was to be filed no later than March 28, 2001. Plaintiff abided by the Court's order and filed this notice of appeal on March 27, 2001. In the interim, defendant filed a motion for reconsideration of the March 14, 2001 order, arguing plaintiff had not properly served defendant with notice of his motion for an extension of time. Because plaintiff had not complied with the plain language of Fed. R. App. Pro 4(a)(5)(B), the court granted defendant's motion on May 24, 2001 and rescinded its March 14, 2001 order.

Plaintiff now again moves for an extension of time to file this appeal. Fed. R. App. Prol. 4(a)(5)(A) provides that "[t]he district court may extend the time to file a notice of appeal if...a party so moves no later than 30 days after the time prescribe by this Rule 4(a) expires." In this case, plaintiff filed his initial motion for an extension of time well within

the authorized time period, 13 days after the time prescribe by Rule 4(a). At the time of filing his initial motion for an extension, plaintiff therefore had 17 days remaining in which he could have filed a motion for an extension of time. Plaintiff understandably relied on the Court's March 14, 2001 order, filing his notice of appeal by the date specified in that order, believing there was nothing further he needed to do in order to comply with Rule 4(a).

After receiving the Court's May 24, 2001 order rescinding its March 14, 2001 order, plaintiff renewed his motion for an extension of time on June 12, 2001, and fully complied with Fed. R. App. Pro. 4(a) only 12 days after the Court's order. Because plaintiff diligently pursued his rights here, the Court believes that equitable tolling is appropriate. The Court will therefore toll the plaintiff's period of time to file his motion for an extension from the time he held his initial motion (on December 6, 2000) until the date of the Court's May 24, 2001 order. The court recognizes that equitable tolling is only applied on timing provisions for notices for appeal sparingly and in unique circumstances. Arnold v. Wood, 238 F.3d 992, 996 (8th Cir. 2001). However, in this case the Court believes that application of the doctrine is appropriate. Plaintiff received assurances by this Court, through its March 14, 2001 order granting his extension of time to file a notice of appeal, that he had performed an act, which if properly done would postpone the deadline for filing his appeal. *Id.* Given plaintiff's continued diligence and the prompt correction of his defect under Rule 4(a) upon issuances of the Court's May 24, 2001 order, equitable tolling is appropriate.

As a result, plaintiff had 17 of the 30 days prescribed by Rule 4(a) remaining to file a motion for extension of time to appeal when the Court issued its May 24, 2001 order. Accordingly, plaintiff was within the 30-day time period allowed by Fed. R. App. Proc. 4(a)(5)(A)(1). Plaintiff's request for an extension to appeal is timely and the Court finds that the plaintiff has shown good cause for an extension to appeal.

Based upon plaintiff's request, and upon all the files, records, and proceedings herein, **IT IS HEREBY ORDERED that:**

1. Plaintiff's request for an extension to file an appeal of the judgement Docket No. 657 is GRANTED.

2. Per Rule 4(a)(5)(C) of the Rules of Appellate Procedure, plaintiff has ten (10) days after the date of this Order to file his appeal. Plaintiff's appeal must be filed no later than July 9, 2001.

DATED: June 22, 2001
at Minneapolis, Minnesota

_____

JOHN R. TURNHEIM
United States District Judge

Mr. George E. Bowler
4041 Grand Avenue South
Minneapolis, MN 55409

Re: 01-2429 George E. Bowler vs. WIlliam J. Henderson

Dear Mr. Bowler:

Enclosed is a copy of an order entered today in the above case at the direction of the court.

(5009-010199)

Sincerely,

Michael E. Gans
Clerk of Court

mer.

Enclosure(s)

cc: Honorable John R. Tunehim, U.S. District Judge
Patricia R. Cangemi
Richard Sletten, Clerk

District Court/ Agency Case Number(s): CIV 98-1577 JRT/FLN

United States Court of Appeals
FOR THE EIGHT CIRCUIT

No. 01-2429

George E. Bowler, Appellant,	*	
	*	
v.	*	Order Denying Petition for Rehearing and for Rehearing En Banc
	*	
John E. Potter, Postmaster General, Appellee.	*	
	*	

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

(5128-010199)

March 27, 2002

Order Entered at the Direction of the Court:

Clerk, U.S. Court of Appeals, Eighth Circuit

United States Court of Appeals
FOR THE EIGHT CIRCUIT

No. 01-2429

George E. Bowler, Appellant,	*	
	*	
v.	*	Appeal from the United States
	*	District Court for the
	*	District of Minnesota
John E. Potter, Postmaster General[1], Appellee.	*	
	*	

Submitted: January 6, 2002
Filed: February 11, 2002

Before McMILLIAN, BOWMAN, and BYE, Circuit Judges.

PER CURIAM.

George E. Bowler appeals the District Court's adverse grant of summary judgement in his employment discrimination action against the Postmaster General of the United States Postal Service (USPS). We dismiss the appeal for lack of appellate jurisdiction See Arnold v. Wood, 238 F.3d992, 994 (8th Cir.) (holding that the court must ascertain existence of appellate jurisdiction before proceeding to analyze merits), cert. denied, 122 S. Ct. 400 (2001).

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[1]John E. Potter has been appointed to serve as Postmaster General, and is substituted as appellee pursuant to Federal Rule of Appellate procedure 43(c)(2).

The District Court entered judgement for USPS on September 26, 2000 and Bowler moved for an extension of time to file his notice of appeal on December 6, 2000—eleven days after the sixty-day period of time within which Bowler was required to file his notice of appeal. See Fed. R. App. P. 4(a)(1)(B) ("When the United States, or its officer or agency is a party, the notice of appeal may be filed by any party within 60 days after the judgement or order appealed from is entered."). In support of his motion, Bowler claimed that he had misunderstood the time limits for filing an appeal. On March 14, 2001, the Court granted Bowler's motion, noting his pro se status and concluding that he had established "good cause."

On May 24, 2001, however, the District Court rescinded its March 14, 2001 order, because Bowler had failed to provide USPS with notice of his motion as required under federal rules. See Fed. R. App. P. 4(a)(5)(B) (describing that notice must be given to other parties according to local rules when motion for extension is filed after expiration of time prescribed for filing notice of appeal); Bartnek v. Bubak, 941 F.2d 726, 728 (8th Cir. 1991) (holding that after initial appeal period expired, district court was without jurisdiction to act on ex parte motion to extend time and its order granting motion was void). The March 14 order granting Bowler's request for an extension of time to file his notice of appeal was also improper because it had applied the wrong standard. See Bartunek, 941 F 2d at 728 (explaining that the more stringent "excusable neglect" standard, not "good cause" is appropriate for determining whether motion for extension filed after experimentation of initial time for appeal may be granted; Fink v. Union Cent. Life Ins. Co., 65 F.3d 722, 724 (8th Cir. 1995) (outlining excusable-neglect analysis); cf. Ackra Direct Mktg. Corp. v. Fingerhunt Corp., 86 F.3d 852, 856-57 (8th Cir. 1996) (describing that pro se status does not generally excuse party from compliance with federal rules).

The District Court continued to err by suggesting in its May 24, 2001 rescission order that Bowler could file another request for extension: the time to do so—measured from the entry of judgement on September 26, 2000, see Fed. R. App P. 4(a)(5)(A) ("The district court may extend the time to file a notice of appeal if a party so moves no

later than 30 days after the time prescribed by this Rule 4(a) expires")—had long since passed, see Fed. R. App.P.26(b) (describing how the court may not extend time to file notice of appeal except as authorized by Rule 4). In granting Bowler's renewed request for an extension, the Court applied the unique-circumstances exception to Rule 4(a); however, it was not proper to do so under these circumstances. See Hable v. Pairoler, 915 F.2d 394, 395 (8th Cir. 1990) (holding that the unique circumstances exception applies only if party has performed an act which, if properly done, would postpone appeal deadline, and has received specific assurances by judicial officer that act was properly done).

Accordingly, we dismiss the appeal for lack of jurisdiction.

A true copy.

Attest:
CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.